

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MADELINE RODRIGUEZ,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 02-017-KAJ
)	
)	
JO ANNE B. BARNHART,)	
Commissioner of Social Security)	
)	
Defendant.)	

MEMORANDUM OPINION

Gary C. Linarducci, Esquire, 92 Read's Way, Suite 102, New Castle, Delaware 19720;
Counsel for Plaintiff.

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February 25, 2004
Wilmington, Delaware

JORDAN, District Judge

I. INTRODUCTION

Before the Court is plaintiff Madeline Rodriguez's ("Rodriguez") motion for summary judgment (Docket Item "D.I." 14) and defendant Commissioner of Social Security's ("Commissioner") cross motion for summary judgment (D.I. 16). Rodriguez brings this action under 42 U.S.C. § 405(g), seeking review of the Commissioner's decision denying her supplemental security income under Title XVI of the Social Security Act ("the Act"), 42 U.S.C. §§ 1381-1383f. The court has jurisdiction to review the Commissioner's decision under 42 U.S.C. § 405(g) of the Act.

For the reasons that follow, the Rodriguez's motion (D.I. 14) will be denied and the Commissioner's motion will be granted (D.I. 16).

II. BACKGROUND

A. Procedural History

On December 1, 1995, Rodriguez filed for disability insurance with the Social Security Administration ("SSA"). (D.I. 10 at 101-04.) The claim was denied on January 12, 1996. (D.I. 10 at 105-08.) On February 5, 1996, Rodriguez sought reconsideration of that decision, but on May 10, 1996, her application was again denied. (D.I. 10 at 109-10, 111-14.) Rodriguez's request for a hearing before an Administrative Law Judge ("ALJ") was granted, and the hearing was held on April 23, 1998. (D.I. 10 at 27-30.) The ALJ found that Rodriguez did not qualify for disability insurance. (D.I. 10 at 12-22.) Rodriguez appealed the ALJ's decision to the Appeals Council, but on October 27, 2001, the council denied review. (D.I. 10 at 4-5.) Therefore, the August 28, 1998 decision of the ALJ became the final decision of the Commissioner. See 20 C.F.R. §§

404.955, 404.981, 422.210. Rodriguez now seeks review by this Court under 42 U.S.C. § 405(g). (D.I. 3.)

B. Facts

Rodriguez acquired a high school education in Puerto Rico. (D.I. 10 at 47.) She asserts that she cannot carry on a conversation in English (D.I. 10 at 50), and she testified before the ALJ with the aid of an interpreter. (D.I. 10 at 46.) Prior to September 15, 1995, Rodriguez worked as a housekeeper, dish washer, and bus driver. (D.I. 10 at 123.) At the time of the ALJ's decision on August 28, 1998, Rodriguez was thirty-eight years old. (D.I. 10 at 13.)

Rodriguez alleges that she became unable to work on September 15, 1995 (D.I. 10 at 101) due to neck pain, lower back pain, headaches, dizziness, knee problems, seizures, blackouts, anxiety, and memory and concentration problems. As early as April 14, 1995, Rodriguez was getting treatment for neck and lower back pain, headaches, and anxiety. (D.I. 10 at 137-38.) She claims that these symptoms worsened after May 25, 1995, when she was involved in an automobile accident. (D.I. 10 at 139-41.) After the accident, she also began complaining to her physicians of memory loss, concentration problems, and dizziness. (D.I. 10 at 139-41, 151-52.)

1. Medical Evidence

On April 14, 1995, Rodriguez sought treatment from Dr. Ross Ufberg at the Wilmington Pain and Rehabilitation Center. (D.I. 10 at 137-38.) On this date, Rodriguez complained of neck pain and stiffness, daily headaches, and anxiety. (*Id.*) Dr. Ufberg noted that Rodriguez described improvement in her back pain. (*Id.*) At the time of the visit, Rodriguez was taking Anaprox daily for pain, Esgic plus for headaches,

and Xanax 0.25 mg. twice per day for anxiety. (*Id.*) Dr. Ufberg noted that Rodriguez suffered from “cervical, thoracic, lumbosacral strain, muscular headaches, fibromyalgia, and anxiety disorder.” (*Id.*) He reviewed Rodriguez’s home program of neck stretching exercises, increased her dosage of Xanax to 0.5 mg, continued her use of Anaprox and Esgic, added Pamelor to assist with sleep, and referred her for psychological or psychiatric counseling for her anxiety. (*Id.*)

On October 12, 1995, Rodriguez returned to Dr. Ufberg. (D.I. 10 at 139-41.) She complained that her headaches, neck and back pain, and anxiety had increased after sustaining injuries in a car accident on May 25, 1995. (*Id.*) Dr. Ufberg also noted that Rodriguez was having difficulty with her memory, which she claimed caused her to lose her job as a bus driver. (*Id.*) Dr. Ufberg determined that Rodriguez suffered from exacerbation of cervical, thoracic and lumbosacral strain, muscular headaches, and anxiety disorder. (*Id.*) He noted that she had fibromyalgia and memory difficulties. (*Id.*) Dr. Ufberg recommended that Rodriguez restart the taking of Xanax, Pamelor, Anaprox, and Esgic. (*Id.*) He also placed her on temporary disability, while starting her on outpatient therapy to reduce the pain. (*Id.*) The outpatient therapy consisted mostly of stretch exercises, and Rodriguez attended therapy at least four times from October 12, 1995 to January 23, 1996. (D.I. 10 at 142-47.) Dr. Ufberg referred Rodriguez to Dr. Thomas Fiss for x-rays on her cervical spine and lumbar spine. (D.I. 10 at 149.) On October 26, 1995, Dr. Fiss reported that the “lumbosacral spine appears within normal limits” and that there is “mild degenerative change at C5-6.” (*Id.*)

On December 5, 1995, Dr. Ufberg noted that the x-rays of Rodriguez’s cervical and lumbar spine were “significant for mild degenerative changes of C5-6.” (D.I. 10 at

151-52.) He documented that Rodriguez was experiencing worse headaches than before, increasing problems with her balance, memory and concentration, and “significant anxiety” that caused her to awaken screaming in the middle of the night. (*Id.*) Dr. Ufberg further reported that Rodriguez noted “good relief with the Esgic Plus,” and he continued her use of Esgic Plus for the headaches, encouraged an increased dosage of Xanax for the anxiety, and maintained her use of Anaprox and Pamelor to assist with pain and sleep. (*Id.*) Dr. Ufberg recommended that Rodriguez consult with another doctor for relief from vertigo. (*Id.*) He also encouraged her to restart outpatient therapy and to continue stretching exercises at home. (*Id.*) Dr. Ufberg recommended that Rodriguez remain on temporary disability. (*Id.*)

On December 18, 1995, a state agency physician completed a Residual Functional Capacity assessment relative to Rodriguez’s physical capabilities. (D.I. 10 at 170-76.) The physician determined that Rodriguez could lift and/or carry twenty pounds occasionally and ten pounds frequently, stand and/or walk about six hours in an eight-hour workday, sit about six hours in an eight-hour workday, and push and/or pull in an unlimited amount. The physician also opined that Rodriguez would occasionally be limited in climbing, balancing, stooping, kneeling, crouching, and crawling. (*Id.*) Rodriguez was to avoid all exposure to hazards like machinery and heights, and she needed to avoid concentrated exposure to extreme cold, extreme heat, wetness, and humidity. (D.I. 10 at 170-76.)

Between December 1995 and April 1996, Rodriguez received counseling at the NCC Community Mental Health Center. (D.I. 10 at 153-69.) On January 5, 1996, a state agency physician completed a Psychiatric Review Technique Form and a Mental

Residual Functional Capacity Assessment relative to Rodriguez's mental functioning. (D.I. 10 at 177-88.) The physician concluded that Rodriguez suffered from anxiety related disorders. (D.I. 10 at 177.) It was determined that she was slightly restricted in activities of daily living and social functioning, often deficient in concentration, persistence, or pace, and had never experienced an episode of decompensation in a work setting. The physician further noted that Rodriguez was moderately limited in her ability to carry out detailed instructions, in her ability to maintain attention and concentration for extended periods, and in her ability to complete a normal workday and workweek without interruptions from psychologically based symptoms, but the physician ultimately concluded that Rodriguez "does not appear too impaired and should be capable of at least non-stressful work." (D.I. 10 at 177-88.)

On January 18, 1996, Rodriguez complained to Dr. Ufberg of headaches, neck pain, back pain, memory problems, and nightmares. (D.I. 10 at 190-91.) Her anxiety had significantly improved with the use of the Xanax. (*Id.*) Dr. Ufberg's diagnoses remained unchanged, and he determined that Rodriguez should continue temporary total disability and use of the medications, physical therapy, stretching exercises. (*Id.*) He again recommended that Rodriguez be evaluated by another doctor for vertigo. (*Id.*) Based on that recommendation, on January 22, 1996 she met with Dr. Robinson, who conducted a Posturography Study that produced a normal motor control test but was positive for central and peripheral labyrinthine system dysfunction. (D.I. 10 at 252.) On January 31, 1996 Dr. Robinson prescribed Klonopin for the dizziness, and he noted that the dizziness would be a long term problem. (D.I. 10 at 248.)

On February 1, 1996, mental health treatment providers at the New Castle Community Health Center reported that Rodriguez had Post Traumatic Stress Disorder (“PTSD”). (D.I. 10 at 192-93.) The only limitation noted on the report was that Rodriguez was unemployed with four children and minimal social support. (D.I. 10 at 192-3.) On March 11, 1996, Dr. Ufberg determined that Rodriguez remained temporarily totally disabled. (D.I. 10 at 196-97.) He added “central peripheral traumatic labyrinthine system dysfunction” to the list of Rodriguez’s medical problems and changed her headache medication from Esgic Plus to Midrin. He noted that Rodriguez felt that the Klonopin prescribed by Dr. Robinson reduced the frequency of the spinning sensations. (*Id.*)

On March 27, 1996, Dr. Robinson noted that Rodriguez was feeling better due to the medication he prescribed. (D.I. 10 at 248.) He noted that she still had headaches and dizziness, and that he tried to convey to Rodriguez that it would take a long time for the dizziness to cease. (*Id.*) Dr. Robinson wrote that Rodriguez “does do something most days.” (*Id.*) On March 29, 1996, Dr. Robinson explained that the trauma to Rodriguez’s balance system was permanent, and that people with her injury tend to partially improve over the course of 3-5 years. (D.I. 10 at 198.) His opinion was that Rodriguez should be limited to non-dangerous work. (*Id.*)

On April 16, 1996, a state agency physician completed a second Mental Residual Functional Capacity Assessment relative to Rodriguez’s mental status. (D.I. 10 at 208-10.) Part of the physician’s conclusion was that Rodriguez was moderately limited in her ability to concentrate for extended periods, perform activities within a schedule and maintain attendance, and complete a workday and workweek without interruptions from

psychologically based symptoms. (*Id.*) The physician ultimately maintained that Rodriguez was able to take care of herself and her children, and that she appeared to function independently. (*Id.*) It was noted that Rodriguez drives, shops, visits, attends church, and maintains her hygiene. (*Id.*) The physician believed that Rodriguez was capable of low stress work. (*Id.*)

On April 19, 1996, a state agency physician completed a second Psychiatric Review Technique Form and concluded that Rodriguez suffered from Anxiety Disorder and Post Traumatic Stress Disorder. (D.I. 10 at 199-207.) The physician maintained that she had moderate restriction of activities of daily living, slight difficulties in maintaining social functioning, often had deficiencies in concentration, and had never experienced decompensation in a work setting. (D.I. 10 at 206.) On April 30, 1996, a state agency physician completed a second Residual Physical Functional Capacity Assessment and found that Rodriguez could lift and/or carry twenty pounds occasionally and ten pounds frequently, stand and/or walk about six hours in an eight hour workday, sit for six hours in an eight hour workday, and push/pull without limitation. (D.I. 10 at 212-18.) Rodriguez's limitations included never climbing ladders, ropes, or scaffolds and avoiding exposure to all hazards. (D.I. 10 at 214-16.) Furthermore, she was deemed occasionally limited in climbing ramps and stairs, balancing, stooping, kneeling, crouching, and crawling. (D.I. 10 at 214.)

Rodriguez began to see Doctor Maria D. Perez in 1997. (D.I. 10 at 227.) On March 26, 1997, Dr. Perez noted that Rodriguez was experiencing chronic pain and dizziness. (*Id.*) On August 6, 1997, Dr. Perez acknowledged that Rodriguez was experiencing chronic headaches, neck pain, vertigo, dizziness, and depression. (*Id.*)

She prescribed Prozac for Rodriguez's depression, and suggested that Rodriguez perform increased activities and write things down that she was having trouble remembering. (*Id.*)

On August 7, 1997, Dr. Perez completed a Medical Certification Form for the State of Delaware Division of Social Services. (D.I. 10 at 234.) In the form, she diagnosed Rodriguez as experiencing chronic head pain, labyrinthitis, depression, and memory loss. (*Id.*) Dr. Perez further found that Rodriguez was incapable of working at her usual occupation, and that her ability to care for her children was substantially reduced and expected to last more than twelve months. (*Id.*) Dr. Perez indicated that she would not allow Rodriguez to perform any other work on a full-time basis. (*Id.*) However, Dr. Perez did find that Rodriguez was capable of participating in classroom training and did not need in-home care. (*Id.*) Rodriguez returned to Dr. Perez's office on August 20, 1997, complaining of chronic pain, dizziness, and depression. (D.I. 10 at 226.) Dr Perez referred her to Dr. Texideo for an evaluation pertaining to vertigo. (*Id.*)

On August 20, 1997, Rodriguez visited Dr. Robinson and complained of dizziness and nausea. (D.I. 10 at 251.) Rodriguez had been off of all of her medications for one month. (*Id.*) Dr. Robinson explained to Rodriguez that her chronic dizziness would not dramatically improve and that the dizziness would slowly get better with time. (*Id.*)

Between January 20, 1998 and April 8, 1998, Rodriguez visited Dr. Perez on three occasions. (D.I. 10 at 225.) Dr. Perez diagnosed chronic vertigo, allergies, and "M.S." symptoms. (*Id.*) On April 21, 1998, Rodriguez was treated at St. Francis

Hospital's Department of Emergency Medicine. (D.I. 10 at 244.) She was diagnosed with Migraine Headache, and referred to Dr. Perez for a follow-up visit. (*Id.*)

2. Rodriguez's Testimony

On April 23, 1998, Rodriguez, with the aid of an interpreter (D.I. 10 at 46), appeared and testified at the hearing held before an ALJ. (D.I. 10 at 12.) In her testimony, Rodriguez alleged that she was suffering from seizures, cracking knees, back pain, neck pain, anxiety, depression, migraine headaches, and dizziness. (D.I. 10 at 46-60.) Rodriguez asserted that she had not told her present doctors of the seizures. (D.I. 10 at 56.)

3. Glenda Torres's Testimony

On April 23, 1998, Glenda Torres ("Torres"), Rodriguez's daughter, testified at the hearing held before the ALJ. (D.I. 10 at 60-79.) Torres testified that before Rodriguez became unable to work, Rodriguez had worked as a bus driver for Red Clay and Brandywine School Districts. (D.I. 10 at 64.) Torres further testified as to Rodriguez's health, social life, and ability to work and run errands. (D.I. 10 at 60-79.)

Torres testified that Rodriguez suffered from body pain and headaches everyday, dizziness three or four times per month, and blackouts two to three times per month. (*Id.*) According to Torres, Rodriguez stopped going up the stairs in her home by herself after falling down the steps and becoming scared. (*Id.*) Torres further stated that Rodriguez cooked and cleaned with help, listened to music and watched television to pass time, and went food shopping with her children once per month. (D.I. 10 at 71-76.) Torres asserted that Rodriguez had a boyfriend and saw him once or twice per week, and sometimes went out with him. (D.I. 10 at 77.)

4. Vocational Expert's Testimony

On April 23, 1998, William T. Slaven III, a certified vocational expert, testified on the skill and exertional level of Rodriguez's past work in housekeeping and as a bus driver and on whether Rodriguez would be able to work in the future. (D.I. 10 at 79-96.) Slaven asserted that a hypothetical person with Rodriguez's symptoms would not be able to perform her past work as a housekeeper or bus driver. (D.I. 10 at 81-83.) Slaven also testified that there were jobs in the national economy that a hypothetical person with Rodriguez's symptoms and qualifications could perform. (D.I. 10 at 84.) At the light exertional level, within Rodriguez's restrictions, Slaven testified that a hypothetical person with Rodriguez's symptoms could be a locker room attendant, with 1,000 jobs existing in Delaware and 45,000 jobs existing nationally. (*Id.*) Also, at the light exertional level, a hypothetical person with Rodriguez's symptoms could be a restroom attendant, with 800 jobs in Delaware and 35,000 jobs nationally. (D.I. 10 at 85.) Slaven further testified that there were jobs in the national and regional economy that a person with Rodriguez's limitations, who also was illiterate in English, could perform. (D.I. 10 at 87-93.) However, when asked if there were jobs a person with Rodriguez's limitations could perform if the ALJ found Rodriguez's and Torres's testimony fully credible, Slaven testified that no jobs existed. (D.I. 10 at 93.) Slaven asserted that dizziness, headaches, and seizures, taken individually, would each prevent employment if they were experienced at the level Rodriguez and Torres testified. (D.I. 10 at 93-95.)

C. The ALJ's Decision

To determine whether a claimant is entitled to disability benefits, and ALJ applies a “sequential five-step inquiry pursuant to 20 C.F.R. § 404.1520[]”. *Morales v. Apfel*, 225 F.3d 310, 316 (3d Cir. 2000); see 20 C.F.R. § 404.1520; *Brewster v. Heckel*, 786 F.2d 581, 583 (3d Cir. 1986). Under that inquiry:

[T]he [ALJ] determines first whether an individual is currently engaged in substantial gainful activity. If that individual is engaged in substantial gainful activity, [she] will be found not disabled regardless of the medical findings. If an individual is found not to be engaged in substantial gainful activity, the [ALJ] will determine whether the medical evidence indicates that the claimant suffers from a severe impairment. If the [ALJ] determines that the claimant suffers from a severe impairment, the [ALJ] will next determine whether the impairment meets or equals the list of impairments in Appendix I of sub-part P of Regulations No. 4 of the Code of Regulations. If the individual meets or equals the list of impairments, the claimant will be found disabled. If [she] does not, the [ALJ] must determine if the individual is capable of performing [her] past relevant work considering [her] severe impairment. If the [ALJ] determines that the individual is not capable of performing [her] past relevant work, then [the ALJ] must determine whether , considering the claimant's age, education, past work experience and residual functional capacity, [she] is capable of performing other work which exists in the national economy.

Brewster, 786 F.2d at 583-584 (internal citations omitted); see *Plummer v. Apfel*, 186 F.3d 422, 428-29 (3d Cir. 1999).

In this case, after applying the five-step evaluation, the ALJ determined that Rodriguez was not disabled within the meaning of the Act and its regulations. (D.I. 10 at 22). The ALJ first found that Rodriguez was not working and was not engaged in substantial gainful activity. (D.I. 10 at 13.) Next, the ALJ concluded that Rodriguez suffered from the severe impairments of back strain (cervical, thoracic and lumbar), headaches, anxiety, depression and labyrinthine dysfunction. (D.I. 10 at 14.) However, the ALJ found that these severe impairments did not meet or equal the criteria

established for impairment shown in the Listings of Impairments in Appendix 1, Subpart P, Regulations No. 4 of the Code of Regulations. (*Id.*) The ALJ then determined that Rodriguez had a residual functional capacity to perform less than a full range of light work. (D.I. 10 at 19.) However, because Rodriguez's previous work experience as a bus driver or housekeeper was "light to medium exertional level occupations," the ALJ determined that she was not able to perform her past relevant work. (*Id.*) Therefore, the ALJ had to determine, given Rodriguez's vocational profile (age, education, work experience and residual functional capacity), whether there are a significant number of jobs existing in the regional or national economy that she could perform. (*Id.*); see *Morales*, 225 F.3d at 316. To help make this determination, the ALJ solicited the testimony of a certified vocational expert. (*Id.*) At the April 23, 1998 hearing, vocational expert William T. Slaven III testified that, given Rodriguez's vocational profile, she could work as a locker room attendant and restroom attendant. (*Id.*) The ALJ, in reliance on the vocational expert's testimony, concluded that there are jobs in the national economy that Rodriguez could perform and, therefore, found Rodriguez not disabled under the Act and its regulations. (*Id.*)

III. STANDARD OF REVIEW

A court applies plenary review to the Commissioner's application of law. *Markle v. Barnhart*, 324 F.3d 182, 187 (3d Cir. 2003). The Commissioner's findings of fact, however, are reviewed to determine "whether there is substantial evidence to support such findings." (*Id.*) A Court is required to review the entire record when making those determinations. *Reefer v. Barnhart*, 326 F.3d 376, 379 (3d Cir. 2003).

Substantial evidence is defined as “more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). If the Commissioner’s decision is supported by substantial evidence, then a Court is bound by those factual findings. *Plummer*, 186 F.3d at 427.

IV. DISCUSSION

Rodriguez submits that the findings of the ALJ are not supported by substantial evidence. (D.I. 15 at 17.) Specifically, Rodriguez argues that the ALJ failed to afford appropriate weight to Rodriguez’s subjective complaints of dizziness, even though her complaints were supported by uncontroverted objective medical evidence. (*Id.*) Further, Rodriguez contends that the ALJ failed to give Rodriguez’s treating physician’s opinion controlling weight. (*Id.*)

A. The ALJ gave appropriate weight to Rodriguez’s subjective complaints of dizziness

According to the regulation guiding evaluation of a claimant’s subjective complaints of pain and other symptoms, the claimant’s allegations alone will not establish disability. 20 C.F.R. § 416.929(a). A two-step process must be used to determine whether a claimant is disabled. First, the claimant must offer medical signs and laboratory findings which show a medical impairment that could reasonably be expected to produce the alleged pain and other symptoms. 20 C.F.R. § 416.929(a). “Allegations of pain . . . must be supported by objective medical evidence.” *Hartranft v. Apfel*, 181 F.3d 358, 362 (3d Cir. 1999). If the claimant meets this prerequisite, the ALJ

must then determine the intensity and persistence of the claimant's symptoms and the extent to which they limit her capacity to work. 20 C.F.R. § 416.929(c)(1); see also *Hartranft*, 181 F.3d at 362. The regulations provide that in determining the intensity and persistence of pain and other symptoms, the ALJ must consider the claimant's daily activities, intensity of pain, relief from medications, and treatment options. 20 C.F.R. § 416.929(c)(3). "This obviously requires the ALJ to determine the extent to which a claimant is accurately stating the degree of pain or the extent to which he or she is disabled by it." *Hartranft*, 181 F.3d at 362; see also 20 C.F.R. § 404.1529(c).

In this case, the ALJ followed the two-step process outlined in the regulations. (D.I. 10 at 15.) The ALJ determined that medical findings did support Rodriguez's subjective complaints of dizziness because there was objective medical evidence showing that Rodriguez suffered from labyrinthine dysfunction. (D.I. 10 at 14.) The ALJ further found that the intensity and persistence of the labyrinthine dysfunction, taken together with Rodriguez's other medically supported symptoms of back strain, headaches, anxiety, and depression, did not impair Rodriguez's ability to perform light work. (D.I. 10 at 20.) Therefore, the ALJ found that Rodriguez was not disabled. (*Id.*)

The ALJ's decision that the intensity and persistence of Rodriguez's dizziness did not impair Rodriguez's ability to perform light work was supported by substantial evidence. The ALJ cited to specific evidence that showed Rodriguez's dizziness was not so intense or persistent to prevent her from completing light work. In particular, the ALJ cited the following: (1) Dr. Ufberg's notation that Rodriguez believed that the medication prescribed for the labyrinthine dysfunction helped to relieve the condition (D.I. 10 at 16, 196); (2) Dr. Robinson's notation that Rodriguez had only minimal

endpoint nystagmus resulting from her labyrinthine system dysfunction and that all other tests found Rodriguez normal (D.I. 10 at 16-17, 252-55); (3) Dr. Robinson's notation that Rodriguez feels better on the medication and that Rodriguez does perform activities on most days (D.I. 10 at 17, 248); (4) Dr. Robinson's notation that Rodriguez's only work related limitation was a need to avoid "dangerous" work (D.I. 10 at 17, 198); (5) Rodriguez's tendency to drive despite allegedly suffering from dizziness, nausea, and headaches (D.I. 10 at 16-17, 210, 249); (6) Dr. Robinson's notation that Rodriguez's dizziness is better since taking the Xanax (D.I. 10 at 17, 249); (7) the testimony of Rodriguez's daughter which revealed that Rodriguez cooked, washed dishes, cleaned the kitchen and bathroom, lifted a vacuum cleaner, and visited with her boyfriend once or twice per week (D.I. 10 at 18, 71-77); (8) Rodriguez's testimony that she could stand for two or three hours at a time (D.I. 10 at 18, 71-77).

The record further supports the ALJ's finding that Rodriguez's pain and symptoms are not so intense and persistent as to make her incapable of work because a state agency physician who completed a second Mental Residual Functional Capacity Assessment determined that Rodriguez was capable of performing low stress work since she was able to take care of herself and her off-spring, maintain her hygiene, drive, shop, visit with friends, and go to church. (D.I. 10 at 210.) Therefore, in conducting the two-step analysis to determine whether Rodriguez's subjective complaints of dizziness impaired her ability to work and rendered her disabled, the ALJ had the requisite evidence to conclude that Rodriguez's subjective complaints of dizziness did not render her unable to perform light work.

B. Substantial evidence supports the ALJ's decision to reject the opinion of Rodriguez's treating physician

A treating physician's opinions and assessments are generally given more weight than a non-treating physician's. See C.F.R. § 416.927(d)(2). However, in order for the ALJ to give the treating physician's opinion controlling weight, the opinion must be "well-supported by medically acceptable clinical and laboratory diagnostic techniques" and not be "inconsistent with the other substantial evidence" in the case record. (*Id.*) According to the regulations, the more evidence that is given to support an opinion, particularly medical signs and laboratory findings, the more weight the opinion will be given. C.F.R. § 416.927(d)(3). The more consistent the opinion is with the record, the more weight it will be given by the ALJ. C.F.R. § 416.927(d)(4). Opinions of specialists related to their area of speciality are given more weight than the opinions of physicians who are not specialists. C.F.R. § 416.927(d)(5). Furthermore, the regulations state that "[a] statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled." C.F.R. § 416.927(e)(1).

Rodriguez contends that the ALJ failed to give Dr. Perez's opinion that Rodriguez was disabled and unable to work controlling weight. (D.I. 15 at 20-21.) Here, the ALJ could properly reject the assessments made by Dr. Perez because there was contradictory medical evidence that showed that Rodriguez was not disabled, and because Dr. Perez's opinion was not supported with specific medical signs or laboratory findings.

1. Contradictory medical evidence

A treating specialist, Dr. Robinson, and several state agency physicians determined that Rodriguez was able to perform some level of work activity. According to Dr. Robinson, the treating specialist to whom Dr. Ufberg referred Rodriguez for testing and treatment for labyrinthine system dysfunction, Rodriguez's change in balance only limited her to performing non-dangerous work. (D.I. 10 at 198.) In following the regulations, because Dr. Robinson was Rodriguez's treating specialist for the labyrinthine system dysfunction, his opinion should be given more weight than non-treating physicians who are not specialists. See C.F.R. § 416.927(d)(5).

Also, none of the state agency physicians who examined Rodriguez determined that she was incapable of caring for herself or unable to work. See *Jones v. Sullivan*, 954 F.2d 125, 128 (3d Cir. 1991) (holding that ALJs may reject treating physicians' opinions based on contradictory opinions offered by state agency physicians). Their physical evaluations determined on two different occasions that Rodriguez should avoid exposure to hazards and was occasionally limited in her ability to climb, balance, stoop, kneel, crouch, and crawl. (D.I. 10 at 170-76, 212-18.) However, it was determined on both occasions that Rodriguez could lift and/or carry twenty pounds occasionally and ten pounds frequently, stand and/or walk about six hours in an eight hour workday, sit for six hours in an eight hour workday, and push/pull without limitation. (D.I. 10 at 170-76, 212-18.) State agency physicians who completed mental examinations on Rodriguez concluded that her only limitation was that she was unemployed with four children and had minimal social support. (D.I. 10 at 192-3.) Further, during a second

mental evaluation, the physician determined that Rodriguez was not impaired and was capable of non-stressful work. (D.I. 10 at 177-88.)

2. Unsupported medical opinion by treating physician

Dr. Perez did not support her opinion that Rodriguez was unable to work or care for her children with specific medical signs or laboratory findings. Dr. Perez's notes are sparse, and they seem only to reiterate Rodriguez's subjective complaints. (D.I. 10 at 225-29, 234.) Furthermore, Dr. Perez's evaluation of Rodriguez provided to the Division of Social Services was inconsistent with her advice to Rodriguez on how to improve her health. (D.I. 10 at 234.) While Dr. Perez opined that Rodriguez was unable to work, she encouraged Rodriguez to perform more activities and to participate in classroom training. (D.I. 10 at 227, 234.)

V. CONCLUSION

For the reasons stated, defendant's motion will be granted (D.I. 16) and plaintiff's motion (D.I. 14) will be denied. An appropriate order will issue.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MADLINE RODRIGUEZ,)	
)	
Plaintiff)	
)	
v.)	Civil Action No. 02-017-KAJ
)	
JO ANNE B. BARNHART,)	
Commissioner of Social Security)	
)	
Defendant.)	
)	

ORDER

For the reasons set forth in the Court's Memorandum Opinion of today's date in this matter,

IT IS HEREBY ORDERED that Defendant's motion for summary judgment (D.I. 16) is GRANTED, and the Plaintiff's motion for summary judgment (D.I. 14) is DENIED.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

February 25, 2004
Wilmington, Delaware